HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No.17151 OF 2001

-

ORDER:

The petitioner, a private limited company, has filed this Writ petition questioning proceedings dated 25-6-2001 issued by the Chief Engineer (Projects) A.P.Southern Power Distribution Company Limited, Renigunta Road, Tirupathi, Chittoor District, second respondent, confirming the demand of Rs.49,733.19 Ps on account of low power factor surcharge.

The petitioner has obtained High Tension Power service connection for supply of electricity from the Transmission Corporation of A.P. Limited. The consumption charges payable were on month to month basis. The respondents have issued consumption bill dated 1-1-2000 for the month of December, 1999 levying an amount of Rs.1,19,151.40Ps, which is inclusive of amount of Rs.49,733.19Ps on account of surcharge. The petitioner has questioned the said levy of power factor surcharge before the Chief Engineer, by way of representation, but the same was rejected by proceedings dated 25-06-2001.

In this Writ petition, it is submitted by Sri Y.N.Lohitha, learned Counsel for the petitioner, that the said low power factor surcharge is levied without conducting any enquiry and without issuing any prior notice. It is submitted by the learned Counsel that even as per Condition No. 23 of Terms and Conditions of Supply, unless same is notified, there is no power for the respondents to levy surcharge.

On the other hand, it is submitted by Sri Sreeramulu Reddy, learned Counsel appearing for the respondents, that as per the terms and conditions of supply, the power factor of the consumer's installation shall not be less than 0.90, and, if the power factor falls below 0.90 during any month, the consumer shall pay surcharge as contemplated in the condition therein. It is submitted that, in that view of the

matter, as pr the rates notified for surcharge in Condition No.23, as the petitioner did not rectify the power factor within the permissible period, based on the readings recorded, an amount of Rs.49,733.19Ps was imposed. It is further submitted that initially the petitioner had obtained High Tension Power connection (Category-I), and, subsequently, it was converted to Low Tension power Connection (Category III), and, in view of the pendency of the Writ petition, conversion was permitted subject to condition of deposit of the said amount payable by the petitioner.

When the matter has come up for hearing on earlier occasion, the learned Standing Counsel took time to produce records to apprise on what basis the calculation for surcharge on low power factor was arrived at Rs.49,733.19 Ps. Today, he has produced the records, but, however, he has fairly submitted that there is no such quantification for surcharge payable by the consumer. It is further submitted that as per the readings recorded from time to time and entries made in the register, surcharge amount is arrived at, and, is added in the consumption bill.

Condition No. 23 of the terms and conditions of supply framed under Electricity (Supply) Act, 1948, defines Power Factor, which means, ratio of KW hours to the Kilo-Volt Ampere-Hours supplied to the consumer during the month. The said definition says that the power factor of the consumer's installation shall not be less than 0.90, and, if the power factor falls below 0.90 during any month, it attracts surcharge at the percentages as indicated in the condition itself. The power factor range and percentage of surcharge reads as follows:

Sl.No. Power factor Surcharge

Range

1. Below 0.90 & up 0.85 1% of c.c. charges bill of that

month for every fall of 0.01 of

power factor from 0.9

2. Below 0.85 & upto 0.80 1.5% -do- from 0.85

3. Below 0.80 & upto 0.75 2% -do- from 0.80

3. Below 0.75 3% -do- from .75

Though there is no express provision to notify to the consumer, but, having regard to the nature of demand, it is penal one, and, unless the petitioner/consumer is notified the months for which power factor fell below 0.90, the respondents cannot unilaterally arrived at the demand and collect surcharge from the consumer. Admittedly, in this case, the petitioner/consumer was not notified the readings for which month's power factor has fallen below 0.90 and corresponding levy on account of surcharge. As the rates are unilateral and levy attracts in cases where power factor fall below 0.90, unless the same is notified to the petitioner, the respondents cannot levy the amount on account of surcharge. In this case, at no point of time, the petitioner was notified, but, based on the records, unilaterally demanded an amount of Rs.49,733.19 Ps, by adding the same in the consumption bill dated 1-1-2000, issued for the month of December, 1999. A plain reading of the terms and condition of Supply, it appears, there is no remedy of appeal also against such levy. In that view of the matter, I set aside the levy of Rs.49,733.19 Ps on account of surcharge for lower power factor, included in the consumption bill for the month of December, 1999, and the order dated 25-6-2001 passed by the second respondent in proceedings No.CE/Projects/SPDCL/TPT/F.coml/D.No.660/2001. It is open for the third respondent to notify the readings to the petitioner for levy of surcharge on account of lower power factor, and, percentage of surcharge, and, after giving opportunity to the petitioner, pass appropriate orders quantifying surcharge leviabe on the petitioner. If any amount is payable by the petitioner on account of surcharge, it is equally open for the third respondent to adjust the said amount from the amount deposited by the petitioner, as indicated in the proceedings dated 22-12-2001 issued by the Superintending Engineer, third respondent, while permitting conversion from HT category to LT category.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED 21ST December, 2005.

Msnr